MOTION FILED
JUL 2 1987

86 1815

No. 87-

In The
Supreme Court of the United States
October Term, 1987

CREDIT BUREAU SERVICES–NEW ORLEANS, D/B/A CHILTON CORPORATION,

Petitioner,

Versus

THOMAS K. PINNER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE BY TRANS UNION CREDIT INFORMATION CO., INC. IN SUPPORT OF PETITION BY CREDIT BUREAU SERVICES–NEW ORLEANS FOR A WRIT OF CERTIORARI

OSCAR MARQUIS
VICE PRESIDENT AND
GENERAL COUNSEL
TRANS UNION CREDIT
INFORMATION CO., INC.
111 West Jackson Blvd.
Chicago, Illinois 60604
(312) 431-5020

ROGER L. LONGTIN*
RICHARD J. JACOBSON
KECK, MAHIN & CATE
8300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(314) 876-3400

*Counsel of Record

Pandick Technologies, Inc., Chicago • (312) 236-0200

No. 87-

In The
Supreme Court of the United States
October Term, 1987

CREDIT BUREAU SERVICES–NEW ORLEANS, D/B/A CHILTON CORPORATION,
Petitioner,

Versus

THOMAS K. PINNER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Trans Union Credit Information Co., Inc., hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for Petitioner, Credit Bureau Services-New Orleans, d/b/a Chilton Corporation, has been obtained and is reflected in a letter on file with the Clerk of the Supreme Court. The

consent of the attorney for Respondent, Thomas K. Pinner, has been requested and denied.

Respectfully submitted,

Counsel of Record for Amicus Curiae
ROGER L. LONGTIN
KECK, MAHIN & CATE
8300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-3400

TABLE OF CONTENTS

	Page
MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT CONCERNING INTEREST OF AMICUS CURIAE	vi
BRIEF AMICUS CURIAE	1
SUMMARY	1
REASONS FOR GRANTING THE WRIT	
I. Chilton followed reasonable procedures to assure maximum possible accuracy in verifying the Sherwin-Williams credit information on Pinner's credit report	4
II. Accuracy of credit information is a defense to any claim under the Act	6
III. The notation "Dispute-5/83-Litigation Pending" accurately reflected the status of Pinner's Sherwin-Williams account	8
CONCLUSION	9

TABLE OF AUTHORITIES

Cases:	Page
Equifax v. Federal Trade Commission 678 F.2d 1047 (11th Cir. 1982)	7
Koropoulos v. Credit Bureau, Inc. 734 F.2d 37 (D.C. Cir. 1984)	7
Lowry v. Credit Bureau, Inc. of Georgia 444 F. Supp. 541 (N.D. Ga. 1978)	7
McPhee v. Chilton Corporation 468 F. Supp. 494 (D. Conn. 1978)	7
Morris v. Credit Bureau of Cincinnati, Inc. 563 F. Supp. 962 (S.D. Ohio 1983)	7
Pinner v. Schmidt 805 F.2d 1258 (5th Cir. 1986)	3, 5
Stewart v. Credit Bureau, Inc. 734 F.2d 47 (D.C. Cir. 1984)	7
Todd v. Associated Credit Bureau 451 F. Supp. 447 (E.D. Pa, 1977) 578 F.2d 1376 (3rd Cir. 1978) 439 U.S. 1068 (1979)	7

STATUTES

Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq*	*passim*
15 U.S.C. §1681e(b)	1
15 U.S.C. §1681i	2, 4, 6, 7, 8
15 U.S.C. §1681e	2, 4
15 U.S.C. §1681i(a)	4, 5
15 U.S.C. §1681i (b)	5
15 U.S.C. §1681i (c)	5

Page

15 U.S.C. §1681 (a)(1) 6

15 U.S.C. §1681s(a) 8

STATEMENT CONCERNING INTEREST OF AMICUS CURIAE

Amicus curiae, Trans Union Credit Information Co., Inc. ("TUCIC"), is a computerized credit reporting company providing credit information to credit bureaus throughout the United States. Through its credit bureau customers, TUCIC produces millions of credit reports daily. TUCIC's credit reporting activities are governed by the provisions of the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.* (1970) (the "Act"). Accordingly, TUCIC has a vital interest in the proper interpretation of the Act, particularly in instances such as this, where a misinterpretation of the Act threatens the very structure and function of the credit reporting business.

The decision of the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit") seriously undermines the operating rules of the credit reporting business envisioned by Congress. A literal application of the Fifth Circuit decision to the credit reporting business would not only increase the cost of credit reports but would also have the unintended effect of increasing, rather than decreasing, the potential for inaccurate credit information.

Credit information contained in credit reports comes from a variety of sources, including, primarily, computerized accounts receivable tapes provided by credit grantors to computerized credit information companies like TUCIC. Such credit information is processed by TUCIC and made available to credit grantors, employers, insurers, and others permitted to use such data under the Act. The accounts receivable information provided by credit grantors is updated on a regular basis. Accordingly, information on an individual credit report is changed and updated regularly. Accurate and timely credit reporting requires a free flow of information from credit grantors to credit information companies like TUCIC and a minimum of manual intervention in the processing of credit information. Accuracy and speed, which depend upon isolating

credit reporting from subjective, often errant, individual judgments, are essential to the credit reporting business.

The Fifth Circuit opinion in this case subverts the essential goal of accuracy by requiring time consuming, ill-defined procedures and by calling for inappropriate, subjective evaluations of credit information. The effects of the Fifth Circuit opinion would be to hinder members of the credit reporting industry in maintaining acceptable levels of accuracy, to increase the cost of doing business to unacceptable levels, and, because of the subjective nature of the review process envisioned by the Fifth Circuit, place credit information companies like TUCIC at constant risk of litigation.

No. 87-

In The
Supreme Court of the United States
October Term, 1987

CREDIT BUREAU SERVICES–NEW ORLEANS, D/B/A CHILTON CORPORATION,

Petitioner,

Versus

THOMAS K. PINNER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF AMICUS CURIAE

SUMMARY

The United States Court of Appeals for the Fifth Circuit ("Fifth Circuit") misconceives the nature of the credit reporting business, misinterprets the requirements of the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.* (the "Act"), and imposes upon the credit reporting industry methods of operation never contemplated by Congress. The Act was designed to promote the dissemination of accurate credit information, both positive and negative, in order to protect both credit users and credit grantors. It requires credit bureaus, when preparing credit reports, to use "reasonable procedures to assure maximum possible accuracy," 15 U.S.C. §1681e(b), and, in the event of a dispute over information in a credit report, the Act requires

credit reporting agencies to reinvestigate the disputed information, report on its current status, delete it if it cannot be reverified, and, if the reinvestigation does not resolve the dispute, permit the consumer to file a brief statement. 15 U.S.C. §1681i. The ambiguity of the Fifth Circuit's interpretation of Section 1681e and Section 1681i under the facts of this case makes compliance with the Act uncertain and fraught with peril. The Fifth Circuit's decision, in effect a redraft of the Act, will almost certainly create chaos in the national credit reporting business unless it is reversed. A summary of the salient facts of this case as determined by the Fifth Circuit dramatizes both the Fifth Circuit's misinterpretation of the Act and the potential quagmire created by the decision.

Pinner's account at Sherwin-Williams was delinquent beginning June 1980.[1] Sherwin-Williams' credit information, forwarded to Credit Bureau Services-New Orleans ("Chilton") in the regular course of business, showed that Pinner's account was delinquent.

On October 8, 1981, Pinner attempted a credit purchase and was refused because a credit report showed he had a delinquent account. Thereafter, Pinner requested and received a credit report from Chilton showing the delinquent account, as well as materials explaining the procedure to follow to dispute items on that report.

On January 11, 1982, Pinner's attorney notified Chilton that Pinner disputed the accuracy of the Sherwin-Williams charges listed on the credit report. Apparently, Pinner did not dispute the fact that the account was delinquent.

After receiving the communication from Pinner's attorney, Chilton confirmed with Schmidt of Sherwin-

---

[1] While there was a dispute as to the amount of the delinquency, $ 171.11 or $ 121.71, there was no dispute that the account was delinquent.

Williams that Pinner's account was still delinquent.[2] Having confirmed the delinquent account, Chilton tried to relay to Pinner's attorney the Sherwin-Williams confirmation. Pinner's attorney did not return any of Chilton's telephone calls. Accordingly, Chilton did not delete the Sherwin-Williams credit information on Pinner's credit report or add a statement of dispute.

After Pinner commenced this litigation, however, Chilton modified the Sherwin-Williams credit information on Pinner's credit report by adding the words "Dispute-5/83-Litigation Pending". Chilton made this modification on its own initiative, without any request by Pinner.

Noting that no support existed for Pinner's contention that Sherwin-Williams communicated false information to Chilton, the Fifth Circuit found:

> "... Pinner's argument that the information was erroneous as to the amount of the debt is unconvincing. The record clearly shows that Pinner had a delinquent account with Sherwin-Williams in the amount of $ 121.71. A potential creditor checking with Chilton would only be concerned with whether or not the account was delinquent, not with whether the balance was $ 171.11 or $ 121.71 ..." [805 F.2d 1258, 1264 (5th Cir. 1986)]

Viewed against the foregoing factual backdrop and the finding by the Fifth Circuit that the information provided by Schmidt to Chilton was accurate, it is impossible to glean the basis for liability on the part of Chilton to Pinner under the Act.

---

[2] Schmidt was the manager of the Sherwin-Williams store and was responsible for reporting credit information at that store. When Chilton confirmed the information with Schmidt, it was unaware of any bad feelings between the two men. Nevertheless, one point bears emphasizing. Whatever bad feelings might have existed between Pinner and Schmidt does not, as the trial court found, alter the fact that Pinner's account was delinquent.

REASONS FOR GRANTING THE WRIT

I. Chilton followed reasonable procedures to assure maximum possible accuracy under 15 U.S.C. §1681e in verifying the Sherwin-Williams credit information on Pinner's credit report under 15 U.S.C. §1681i.

The letter of Pinner's attorney to Chilton triggered Chilton's obligation under the Act, 15 U.S.C. §1681i(a), to reinvestigate the reported information and to delete derogatory information in the event the information was found to be inaccurate or could no longer be verified. Chilton, without knowledge that there was a personal dispute between Pinner and Schmidt of Sherwin-Williams, followed the standard procedure in the industry by contacting Sherwin-Williams to verify Pinner's account information.[3] Sherwin-Williams verified both the amount and the fact of delinquency.

After repeated unsuccessful attempts to contact Pinner's attorney to relay Chilton's reaffirmation of the accuracy of Pinner's credit history, Chilton, in full conformity with the Act, made no change in the reported information.

The trial court apparently concluded, with no basis either in fact or in law, that Chilton should have deleted the derogatory information in Pinner's credit report because Schmidt of Sherwin-Williams was an unreliable source. This conclusion is utterly preposterous.

Whether or not Pinner and Schmidt had a personal conflict is irrelevant. The fact of the matter is that, as far

---

[3] Even if Chilton had knowledge of the personal friction between Pinner and Schmidt, as the Fifth Circuit erroneously implies, Chilton still followed reasonable reinvestigation procedures in contacting Sherwin-Williams' credit manager. To hold otherwise would result in the untenable conclusion that calling a credit grantor's credit manager was not a reasonable reverification procedure. Such a conclusion would make a mockery of the Act.

as Chilton was or should have been concerned, Schmidt, as the store manager, spoke for Sherwin-Williams and was the only person competent to verify credit information on its behalf. Notably absent from the Fifth Circuit opinion is any suggestion as to what more Chilton could have done to verify Pinner's account. The court blithely concludes that the verification with Schmidt was unreliable (though accurate) and that, absent a reliable verification, " . . . Chilton should have deleted the information altogether, as is required by §1681i(a)," 805 F.2d 1258, 1262.

Such a conclusion might have merit if the Act were designed to shield credit users from derogatory credit information regardless of its accuracy. Given the mechanics of the credit reporting business, and under the reasoning of the Fifth Circuit, any credit user would be able to prevent derogatory information from appearing on a credit report by simply disputing it, triggering a reinvestigation under the Act, 15 U.S.C. §1681i(a), and failing to file a dispute statement under Section 1681i(b).[4] In each instance, a credit reporting company would have to follow the same steps followed by Chilton here and, according to the Fifth Circuit, would be required to delete such information from the credit report. While the net effect of such a procedure would be to insulate credit users from derogatory information, there would be an open season on credit grantors, who would be stripped of all statutory protections, and credit reports would become worthless testimonials to good credit where none existed.

The Act was not designed to promote such bizarre

---

[4] Section 1681i(b) contemplates that in the event a reinvestigation does not resolve the dispute, the consumer may file a written statement setting forth the nature of the dispute. Under Section 1681i(c) the credit reporting agency is obligated to report both sides of the disagreement. Pinner never filed such a statement.

ends. Rather, it was designed to protect credit users and credit grantors by promoting the dissemination of accurate credit information. Congress's intent in this regard is clearly set forth in the Act's "Congressional findings and statement of purpose," which provides in pertinent part:

> "... The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system." [15 U.S.C. §1681(a)(1)]

In support of the goal of accurate credit reporting, Congress did not require credit reporting agencies to make judgments about personalities or decide between consumers and credit grantors in credit disputes or to make credit decisions. Credit reporting agencies cannot be required to resolve disputes between consumers and credit grantors without undermining their statutory obligation to provide accurate information. The principles set forth by the Fifth Circuit in this case, by making shambles of the statutory dispute resolution mechanism, can result only in the dissemination of inaccurate credit information, contrary to the express mandate of Congress, and will deprive the banking system of the necessary information on which to make credit decisions.[5]

II. Accuracy of credit information is a defense to any claim under the Act.

Once the trier of fact determines that credit information contained in a credit report is accurate, no further

---

[5] Pinner could have protected himself from derogatory information in his credit report by disputing the information after Chilton's reinvestigation under the disputes provision of the Act, 15 U.S.C. §1681i, or he could have paid the undisputed amount of his account and required Chilton to report a dispute as to the amount owing but to omit the fact of delinquency.

inquiry into a credit reporting agency's procedures is required. The courts have uniformly held that liability does not attach under the Act if the disputed credit report is accurate. See *e.g.*, *Equifax v. Federal Trade Commission*, 698 F.2d 1047 (11th Cir. 1982); *Todd v. Associated Credit Bureau*, 451 F. Supp. 447 (E.D. Pa. 1977), *aff'd mem.*, 578 F.2d 1376 (3rd Cir. 1978), *cert. denied*, 439 U.S. 1068 (1979); *Lowry v. Credit Bureau, Inc. of Georgia*, 444 F. Supp. 541 (N.D. Ga. 1978); *McPhee v. Chilton Corporation*, 468 F. Supp. 494 (D. Conn. 1978); *Stewart v. Credit Bureau, Inc.*, 734 F.2d 47 (D.C. Cir. 1984); *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37 (D.C. Cir. 1984); *Morris v. Credit Bureau of Cincinnati, Inc.*, 563 F. Supp. 962 (S.D. Ohio 1983). To hold, as the Fifth Circuit did, that Chilton was negligent in its attempts to verify the accuracy of the credit information provided by Sherwin-Williams, in the face of the conclusion that the information was accurate in every material respect, is absurd.

While this is an action brought under the Act, liability under the Act is premised upon negligent or willful conduct. Accordingly, the basic tenets of the law of negligence must apply. Paramount among these tenets is the requirement of an injury. Pinner's "injury" was the denial of credit based upon a credit report that contained credit information conceded to be accurate, i.e., that his account at Sherwin-Williams was delinquent. Whether the amount of that delinquency was $ 171.11 or $ 121.71 is irrelevant. Pinner was denied credit because his account was *delinquent.*

As the Fifth Circuit noted, the fact of delinquency is the only relevant information to a potential creditor. It is undisputed that Pinner was delinquent and that his credit report accurately reflected his delinquency. To allow Pinner to recover damages under these circumstances would be tantamount to providing him a windfall reward for his own misconduct. The Act was never intended to be used in this fashion and such an interpretation would

put every credit reporting company at constant and serious risk. It is one thing to operate in a highly complex business, taking the daily risk of potential liability for inaccurate reporting of credit information. It is another thing altogether to be put at risk for accurate credit reporting when all reasonable procedures have been followed so as to guaranty the credit bureau is reporting accurate information. The first test of the reasonableness of procedures, in *every instance*, should be the accuracy of the information reported.[6]

III. The notation "Dispute - 5 / 83 - Litigation Pending" accurately reflected the status of Pinner's Sherwin-Williams account.

While Pinner did not follow the formal disputes procedures called for under the Act, 15 U.S.C. §1681i, after Chilton's investigation and verification of the account, Chilton, on its own, noted in Pinner's credit report after this litigation was filed that Pinner disputed the account. The Fifth Circuit took umbrage at the notation Chilton used, "Litigation Pending," apparently determining the notation was ambiguous.[7] In arriving at this conclusion, the court ignored two salient facts: (1) the significance that credit grantors attach to such notations, and (2) the

---

[6] The operation of the credit reporting business and the procedures in obtaining credit information are carefully scrutinized by the Federal Trade Commission under the Act, 15 U.S.C. §1681s(a). Credit user plaintiffs simply should have no standing to make claims under the Act where credit information is accurate. Supervisory powers were vested by Congress in the Federal Trade Commission and should remain there.

[7] While the Fifth Circuit inaccurately quotes the notation used by Chilton in Pinner's credit report, it is difficult to believe that the court's opinion would have been swayed by a review of the actual entry.

significance of such an entry on the Pinner credit report.[8]

Credit grantors are familiar with the standard format and terminology used in credit reports. Any credit grantor looking at the notation used by Chilton in Pinner's credit report would know immediately that Pinner disputed the Sherwin-Williams account. If Chilton erred, it erred on the side of Pinner by failing to disclose that Pinner disputed only a portion of the account balance and not the more significant fact of delinquency.

In any event, whatever speculative ambiguity might have arisen as a result of Chilton's choice of words, it could not possibly have had a bearing on the denial of credit to Pinner. If any ambiguity existed, it would only have misled a credit grantor into believing that Pinner disputed the entirety of the Sherwin-Williams information on his credit report, not merely the amount of the delinquency. Accordingly, any inaccuracy in the report would be something a credit grantor, not Pinner, could properly complain of.[9] Pinner's account was delinquent. Whether the "Litigation Pending" referred to by the Fifth Circuit was brought by Pinner or brought by Sherwin-Williams, there is no changing the fact that Pinner's account was delinquent.

CONCLUSION

The credit reporting business in the United States has evolved over the years into a highly efficient, com-

---

[8] It should also be noted that the entry was made after the denial of credit and did not influence any credit decision to the detriment of Pinner.

[9] Moreover, Chilton's notation was entered on the credit report after Pinner's credit application was denied. The Act does not contemplate that liability lies in the abstract, without a credit denial based upon a credit report. To hold otherwise would be to impose further, intolerable liabilities on credit reporting agencies.

puterized system designed to facilitate the granting of credit. If credit reporting companies are required to follow ambiguous, vague, ill-drawn standards in verifying the accuracy of information provided by credit grantors and others, then by necessity the efficiency of the credit reporting system will be severely reduced. Such a result is particularly egregious where, as here, the credit information at issue was accurate.

If the Fifth Circuit's opinion is allowed to stand, it will serve as a credit user's club to beat windfalls out of credit reporting companies. All the credit user need do is dispute derogatory information, even if the information is accurate, in order to obtain judicial review of the procedures followed by the credit reporting company in verifying the accuracy of the information. Without explicit standards that are workable in the industry, credit reporting companies will always be at risk in this type of litigation. Given the purpose and express provisions of the Act, it is whimsical to contend that Congress intended to provide credit users with the power to destroy the industry upon which they depend.

For these reasons, Chilton's Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

OSCAR MARQUIS
VICE PRESIDENT AND
GENERAL COUNSEL
TRANS UNION CREDIT
INFORMATION CO., INC.
111 West Jackson Blvd.
Chicago, Illinois 60604
(312) 431-5020

ROGER L. LONGTIN*
RICHARD J. JACOBSON
KECK, MAHIN & CATE
8300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(314) 876-3400

**Counsel of Record*